

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

No. 76-1140

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

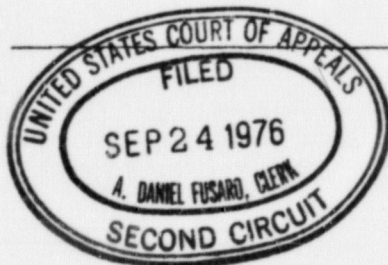
VS.

DAVID N. BUBAR, ET AL

AN APPEAL FROM THE JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

SUPPLEMENTAL APPENDIX OF DEFENDANT-APPELLANT

DAVID N. BUBAR



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CHRONOLOGICAL SUMMARY OF MISTAKES
OR UNUSUAL ACTS OF DEFENDANT'S ATTORNEY
(with comments in parenthesis)

A. Before Jury Present (Sept. 29, 1965)

Transcript - Page 37 Zalowitz interrupts direct exam of photo ID witness with questions and is told by Court:

"That's cross examination."

332 For limited purposes of suppression hearing Zalowitz engages in irrelevant and repetitious questioning of FBI agent and at one point is told by court, "That's an argumentative and silly question. Let's bear in mind the limited purpose of this hearing and try to pay attention to the point." (340)

360 Zalowitz interrupts testimony, claiming that xerox copies provided by government are illegible. Court says they're not and he is not entitled to them anyway.

386 Zalowitz begins cross-examination of witness, wrongly thinking he was a witness who had been interrupted.

412 On cross of FBI agent regarding ID Zalowitz has trouble with relevant questions; and, after court suggests the question, Zalowitz puts a general (and facetious?) one and is told, "That's not the proper question . . . I will endeavor to frame it, since it's apparently difficult." (415).

417 Zalowitz questions again on FBI reports and is told again that Jencks Act doesn't apply to this hearing, and "I indicated that within the last two minutes."

420 The Court: "That's what you just asked him. You don't need to ask each question twice."

(2a)

421 The Court: ". . . try to listen to his answer. He said he didn't make the spread. He told you three times . . ."

422 The court frames questions, is later told to let the witness answer, to take one question at a time, and that another question is argumentative.

431 Court admonishes Zalowitz for a comment.

435 Zalowitz again quickly withdraws an improper question, as court starts to warn him.

(This sort of "cross-examination" will recur with variations many times in the course of the trial.)

473 Zalowitz is told he doesn't need witness to introduce newspaper article he claims constitutes prejudicial publicity.

532 Court cannot understand Zalowitz's question, and then presses Zalowitz to reframe the question.

541 Court tells Zalowitz to go to something else.

544 Court asks Zalowitz, "Why did you ask a question that you knew had been ruled out of order six times?", tells him to be sure to follow court's rulings, and also says, "We have had a lot of problems in the course of examination today, yesterday, and previous proceedings here", and warns Zalowitz again.

827 Zalowitz refuses to reply to court's question as to whether Bubar told press he predicted the fire.

1314 and 1333 Zalowitz continues to have problems on cross-examination of FBI agents.

(3a)

1352 Zalowitz in cross-examination of FBI agent, gets into a ridiculous line of questioning, about a word used in a 302, which he constantly calls "enchilitis" even after being told it's a Mexican food. Who suggested "enchilitis", what educational background does the interviewee have to have to command the word "enchilitis", has the agent ever heard one man call another an "enchilitis"? Finally the court refers him to the Watergate hearings and the usage of the term ("the big enchilaida(s)"), and tells him to go to something else. (1357). Zalowitz persists and soon asks if the interviewee was unfriendly towards Bubar as being one of the "enchilitis". An objection is sustained. (The record does not reflect the degree of convulsion in the courtroom.)

1364 Court says question is not remotely related to this hearing and if Zalowitz can't ask a relevant question, his examination may be over.

1372 On cross-examination of another agent, court asks Zalowitz if he's "asking that in a sincere belief it's a proper question". Zalowitz says yes but withdraws question saying he is never facetious.

1417 Court warns Zalowitz to "stay very relevant" on cross-examination of another FBI agent.

1422 Zalowitz refers to "the telepathic wisdom of the court and myself" and is told the court doesn't know what that means.

(4a)

1614 Zalowitz has asked his co-counsel to put into record that Bubar, by testifying at suppression hearing on alleged illegally seized car, is also not relinquishing his "rights under the First Admendment as a clergyman by whatever privilege he may have between clergyman and penitent."

1716 Zalowitz attempts to argue Bubar must have clergyman on jury of his "peers" (as he did at 1486).

1725 Zalowitz identifies Bubar as a "star" and a "prophet on earth".

1801 Zalowitz accuses U.S. Attorney of holding back material.

(5a)

B. Jury Present for Evidence (unless * used) (October 17, 1975 - Vol. 13).

2036* Zalowitz moves to exclude from courtroom, as prejudicial, barrels which are about to be used as government exhibits. Another defense counsel says government used a great deal of circumspection in handling the matter. Motion denied.

2289* Court indicates that Bubar's motion for suppression "should have been filed months ago", but co-counsel Meehan indicates he "just got into case two weeks before" (evidential hearing the other day). (Zalowitz did not make rather standard motion.)

2380* Zalowitz says government would not furnish list of next days witnesses and this is "horrendous".

Mr. Dorsey: "It is not true, your Honor.
Mr. Zalowitz: Well, I affirm that it is.
The Court: You know today's witnesses, right?
Mr. Zalowitz: Yes, sir.
The Court: Well, then, I don't see what the problem is . . ."

2620* Zalowitz makes (silly) suggestion that the names of every person who comes into courtroom be taken in order to determine if the person is a witness subject to sequestration order.

3039 Zalowitz's cross-exam of principal accusing witness (codefendant Shaw who has pleaded guilty) starts with an offer of a photograph of his home, which is excluded as irrelevant.

3446* Zalowitz agrees that date on Shaw's immunity

(6a)

agreement is not relevant, then reappraises his position, and court says it's not relevant.

3055* Court questions Zalowitz on the details Zalowitz wants concerning a Pennsylvania bombing, since it all appears irrelevant. Zalowitz keeps noting exceptions. Court notes, ". . . I don't understand how it is relevant to this trial to prove that somebody is innocent of some other crime . . ."

3071 Zalowitz asks Shaw: "From where did you gleam your understanding to incorporate the State of Pennsylvania" (in plea bargaining agreement). Witness doesn't understand and Zalowitz in effect repeats the question, again using "gleam--from whom did you deduce--your understanding . . ."

The Court: "What word are you using?"

Mr. Zalowitz: Gleam; or deduce. Gleam. G-l-e-a-m. To become aware of.

Mr. Dorsey: That's a toothpaste. "Gleam" is the word.

Mr. Zalowitz: Sir, the frivolity of the U.S. Attorney will not deter me from the word. It is in Webster's dictionary for the world to know.

The Court: But not spelled that way.

Mr. Zalowitz: Gleam. Not a toothpaste..."

3085 The Court: "Mr. Zalowitz, we have--really now, we have been almost an hour on a matter that is not really the issue in the case . . . so please move on."

3093 Zalowitz on some cross gets into photo of Bubar not yet in evidence. At 3998 he offers it for identification, then after question by court, as full exhibit, 1035 (he does not seem to know the difference).

(7a)

3110* Court tells Zalowitz how to proceed and then asks, "What's the point of this examination, by the way?", and Zalowitz says he's attacking credibility, in his ability not only to identify Bubar, but his entire line of testimony.

3245* (Moeller's attorney indicates to the court he has defense Bubar was crazy: "I think Bubar is crazy, and I think you will agree with that by the time the trial is over.")

3382* Zalowitz attempts to introduce evidence out of turn to "counteract" government exhibit 23.

3412* Zalowitz's exchange with prosecution and court re ("lost"?) paper given out three weeks before.

3415* Court makes suggestions to Zalowitz about limiting questions concerning admissability of testimony about ID; Zalowitz confused and confusing in his statements.

3423* Zalowitz objects to ID witness (Chesiak) pointing to Bubar in courtroom.

3424* Zalowitz's cross-examination of witness re ID of Bubar contains irrelevant and confusing questions, court then puts the question to witness.

3433* Exchange between Court and Zalowitz, showing latter's confusion between in-court ID, photo ID, and statement in 302 at variance with witness' testimony; and also his difficulty stating his position: see--

"The Court: Why is it so hard for me to understand your position? Not the witness'

(8a)

position, not the 302, your position? . . .
The Court: The identification comes from
the witness' testimony. It doesn't come
from a 302. Now, you understand that?"

3440* Then Zalowitz's argument on motion to suppress
ID by witness is only that he did not testify about what
Bubar was wearing when witness saw him. Court denies
motion.

4145 On cross-examination of Moeller's secretary,
Zalowitz tries to get into Bubar prophetic powers, his book,
You Are Psychic, whether she was psychic, whether Bubar was
different, and a multitude of similiar irrelevant repeti-
tious questions leading to sustained objections, some by
other defense counsel.

4180 Court admonishes Zalowitz "to specifically not
try that technique again", and tells him to try to conclude
rapidly.

4187 Zalowitz doesn't appear to know what hearsay
is.

4192 Zalowitz told by court to move on or his exam-
ination is over.

4193 Zalowitz asks if she believes in prophecies,
and court cuts that off--(again at 4207).

4205* Zalowitz wants to ask witness about another
psychic. When court asks what that has to do with guilt or
innocence, he answers: "But the issue is here on the issue
of psychic's powers and prophetic powers. That's one of
the issues that I shall be maintaining throughout my entire

(9a)

case." Court doesn't see present relevancy.

4293 (Moeller's attorney attempts to introduce Bubar's statement to show he's crazy.)

4433 Zalowitz on cross-examination asks repeated questions well beyond scope of direct in spite of numerous objections by U.S. Attorney and sustained by court. Finally told by court his cross-examination is over unless it pertains to direct.

4496 Witness was making in-court identification of defendant Just, but Zalowitz acted as if witness were indicating Zalowitz (both had blue suits).

4979 Zalowitz, at start of cross-examination of finger print expert of F.B.I., asks difficult to understand question, which court attempts to clarify.

4934 Zalowitz complains about "unresponsive" answers, but court disagrees and tells him not to argue with witness.

4988 Zalowitz tries to develop points characterized by court as "patently obvious" and again told him to move on to "something pertinent".

4994 Court ends colloquy with Zalowitz by asking him to make a "conscientious, good faith examination" of himself as to necessary scope of his questioning.

5017 Zalowitz again argues with witness; warned by court (again at 5035).

5035* Court says Zalowitz did not "take to heart" his suggestions at last recess, that Zalowitz must review the extent of his cross-examination and center on something

(10a)

significant--which questioning has not yet developed. Normal rules of cross-examination scope that "apply to any lawyer in any case are going to be enforced."

5049 Zalowitz is told again not to argue with witness.

5062 He tries recross but is unable to question.

5162* Following direct of Wilhelm, Zalowitz requests for first time to listen to and make copy of phone conversation with Bubar which witness taped and is mentioned in 302 and was available for months.

5167* Co-counsel Meehan submits motion and sealed affidavit to court to withdraw from the case. Zalowitz claims his signed consent to motion was hasty and under pressure; Zalowitz retracts statement he can't stand by (5172). Affidavit to be sealed "until such time as there may be a postconviction claim based on effective assistance of counsel" (5174). Finally, no objection by Zalowitz and Bubar to motion and it's granted (5179); but then U.S. Attorney objects (5181) because he feels,

"very strongly, is likely to jeopardize the government's position in sustaining a conviction . . . because of the history of what's gone on so far in this case . . .".

Counsel for another defendant also objects and states:

"I think the fears expressed in that motion have been continually realized at every stage where the co-counsel not withdrawn has taken over the proceedings." (5184).

Counsel for Moeller also objects and adds claim that Bubar "was not mentally responsible for his actions at the time he took those actions" (5137).

(11a)

C. After Co-Counsel's Withdrawal (Nov. 12, 1975 - Vol. 29)

5197 Zalowitz's cross-examination of friend Wilhelm who testified to Bubar's attempts to have him participate in false alibi, runs into almost immediate sustained objections to Zalowitz's attempts to establish FBI "harrassment" of witness. Zalowitz claims that he is not attacking witness' credibility. This is followed by numerous awkward, inconsistent, and excluded questions, including two reversals of position on not attacking credibility (5202 and 5205-6, this latter reversal within a few lines), and an attack on validity of taped phone conversation of witness and Bubar which was not in evidence (5209). Zalowitz then is permitted to cross, that witness was possible FBI suspect, which opens door to U.S. Attorney's redirect showing this was only because Bubar in interview with FBI, had said witness was in Shelton. (Thus Zalowitz reinforces testimony of Bubar's attempt to establish false alibi.)

5289 During cross-examination of Allegheny Airlines' employee, punctuated as usual by numerous sustained objections to irrelevant and wide-ranging questions, Zalowitz asks this not atypical gem:

"In your experience or customer relations, is it your obligatory obligation to inform the FBI of the purchase of any ticket whatsoever by any person whatsoever who rides the freedom of travel on Allegheny Airlines?"

Mr. Dorsey: I don't see where this will take us, I object.

Mr. Zalowitz: It will take us into the First Amendment of the Constitution, Mr. Dorsey."

The objection was sustained until limited to this case.

(12a)

5291 Court tells Zalowitz that he really doesn't need to ask if pieces of paper in evidence exist, and once again, to move on to something else.

5392 To another airline employee Zalowitz puts questions somewhat similar to that quoted just above, and they are of course excluded.

5392* Motion for severance from Bubar on ground of conduct of his counsel, by Attorney Golub:

"I think the concerns expressed by Attorney Sagarin in his pretrial motion have now come to fruition. Over the course of this trial, over the past few days, especially, we've seen--we've seen long, tedious, often wholly irrelevant if not meaningless and incomprehensible cross-examination. We've seen hostile examinations of witnesses of marginal relevance. We've seen inability to frame proper lines of questions . . . we've noticed reactions not only in the jury but in the Court as well. The Court has expressed its impatience with Mr. Zalowitz, expressed its irritation with his lines of questioning. It's cautioned and admonished him repeatedly throughout the trial to move to more relevant lines. It's indicated to him that he is delaying the proceedings . . . the jury's reacted not only to the Court's reactions to Mr. Zalowitz, but as well to the lines of questions asked. We've observed jurors laughing. We've observed jurors groaning. We've observed signs of irritation on jurors' faces . . . Our [other defense counsels'] credibility and our integrity is being diminished by being associated with the defense of Mr. Bubar."

Joined in by Attorney Clifford, the motion is denied by the court with brief comments which do not directly deal with most of above assertions. Zalowitz later (5451) interjects his comments.

(13a)

5458, especially 68-72

Zalowitz's cross-examination of telephone company employee, has many irrelevant and repetitive questions, and appears to irritate court.

5500 Zalowitz crosses on another telephone company employee with some reaction by court and "let's move on".

5554 Zalowitz cross-examines telephone company employee from Bubar's home area. Court interrupts to indicate no sense to have her repeat her testimony, and then repeatedly has to tell Zalowitz she cannot read from records not yet admitted.

5559* Court then excuses jury and allows Zalowitz to try to elicit any information as to inadmissibility in order to avoid witness' returning in morning. Zalowitz makes little progress, objections to questions relating to government's subpoenas of records of house of worship--and tapping--are sustained, and finally court asks a few questions resulting in stipulation and avoiding necessity of witness the next day (5572-3).

5559* (In response to court's question concerning intent of defense to develop claims regarding Bubar's psychic abilities, Zalowitz says yes as to "prophecies". Moeller's attorney also intends to develop them. Some other defense attorneys indicate they will object. Zalowitz indicates he was served today with Moeller's motion for psychiatric exam of Bubar, and he intends to file same motion directed to Moeller. Moeller's attorney suggests

(14a)

Zalowitz and he submit to psychiatric exams.)

5562 Zalowitz withdraws Readers Digest Article (on forged fingerprints) which he had marked earlier.

5796 On cross-examination of FBI custodian of grand jury records, Zalowitz continues to overlook distinction between marking for identification and later admissibility, and again is several times told he can't read from documents not in evidence (see 5804-5).

5822 Zalowitz seeks of FBI witness original of 302 and is told by court that Jencks Act entitles him only to a copy (which he already has).

5827 Zalowitz appears unaware how to get materials his client furnished in response to Grand Jury subpoena, which are available in local FBI office; and is admonished for starting to make a statement.

5861 With water treatment witness on stand, court tells Zalowitz not to be argumentative, then not to go into again a matter not in dispute, then to move on, then to ask a clear question, and then, in absence of jury (5869), rebukes Zalowitz for continuing to cross beyond direct and for trying to ask same question to which objections had just been sustained.

5869 Zalowitz's question about Bubar's psychic powers excluded (beyond scope of direct).

5894* Zalowitz challenges voluntariness of taped statement his client gave to FBI when Zalowitz was present with him, which results in long voir dire of agent.

(15a)

During Zalowitz's cross-examination, court tells him to put only questions which he in good faith thinks may demonstrate involuntariness; a short time later, to avoid "plainly facetious" questions (5909-11); then, "either put a proper question or you are finished" (5913). Next, having great difficulty getting a yes or no answer from Zalowitz as to whether he wishes to present any proof or issue of voluntariness, court asks him, "You have an offer or proof? Surely you know what that is." This finally elicits Zalowitz's answer that "They mentally and psychologically coerced this man into a position where he had no intellect to answer questions"-- in his presence! He then refuses further offer of proof (5916-7). Court rules statement voluntary.

5940 Zalowitz's very hostile cross of FBI agent who testified to Bubar's statement is marked by numerous irrelevant, similar or repetitious questions, many directed to first contact between Bubar and FBI agents at which witness was not present. Court warns him to cross only on direct testimony (5958); shortly he excuses jury and instructs Zalowitz to read transcript at recess so be he will be able to call witness' attention to specific pages (5960).

5961* Zalowitz apologizes for shouting, and then attempts to offer through the FBI agent a tape of a later interview with Bubar, which was not mentioned on direct.

5962 Zalowitz resumes cross-examination, immediately asks argumentative question, and is shortly asked by court the reason for this series of questions. He continues to

(16a)

try to inject new material and irrelevancies, and to argue, often stating "It's in the report"--which is not in evidence. Finally, as he again tries to enter forbidden territory and the court is reacting, he desists (5969). (He has accomplished nothing by his cross-examination, except probable further harm to his client.)

6053* In awkward and ungrammatical objection to phone records relating to Bubar, Zalowitz asks "in actuality, who can, but the Master above, tell whether they were made by Reverend Bubar? . . ." to which the court responds, "Of course, the question is whether the jury can."

6082 On voir dire of bank employee as to admissibility of bank camera photos of Bubar, Zalowitz repeatedly strays from point, and then objects that surveillance by camera is "in invasion of a man's First Amendment rights. This is an invasion of the Constitution, and I think it's horrible . . ." Overruled.

6093 On cross of same employee, Zalowitz quickly goes beyond direct, and again into improper area of whether bank informs its customers they are "on TV camera", then again tries reading of document not in evidence. Court tells him to move on (6101).

6117 On further cross, court asks Zalowitz, "Do you seriously think" that was touched on in direct, and "please consider the propriety of the question before you put it, not after there's an objection and a ruling each time . . ."

6128* Court to Zalowitz: ". . . we're just not going on that silly detour." Zalowitz protests to word "silly" and court rejoins, ". . . I'll further assure you I have been using utmost restraint in not using it in the countless times the word has been called [for], with the jury. . . but I don't want you to think for a minute by using it just this time I didn't think hundreds of other questions were entitled to that label . . ."

6138* Zalowitz says he hasn't seen bank account application form since he deferred to other counsel, to which court says: "I have seen you looking at them . . . but. . . go ahead".

6368 Zalowitz's cross of witness (who severely damaged one of Bubar's excuses for being in plant to conduct water treatment experiments) immediately gets into objectionable area (beyond direct, and hearsay) of conversation with Mr. Moeller's secretary in 302 report; objections are sustained and Zalowitz is told to move on. He quickly tries again, and court states (6371): "Your examination is at an end. I told you three times that topic has been objected to and apparently you can't abide by that . . ."

6399 Zalowitz's voir dire of FBI agent who got handwriting exemplar from Bubar in Zalowitz's presence tries to go into areas beyond admissibility and that it was given under protest, to which objections are sustained. Then court overrules his objection to exemplar, since no legally protected right denied. (Again Zalowitz is so obviously

(18a)

wrong on the law.)

6407 Then on cross-examination, Zalowitz repeatedly gets into irrelevant areas, beyond direct.

6614 Zalowitz objects to another defense counsel's (Koskoff) leading questions--on cross-examination.

6621 Zalowitz begins cross of same witness, financial officer of Moeller's companies, and the day of Mr. Koskoff's cross turns into a night of unclear questions, with numerous sustained objections and attempts to rephrase.

6646* Court excuses jury and asks Zalowitz what he is trying to develop in this line of questioning (largely about profit and loss). Zalowitz cannot clearly say and attempts a variety of answers which are inconsistent with one another and not relevant to the line of questioning. He repeatedly claims he does not want to expose his defense, and court finally asks him to make in camera disclosure (6652). At sidebar, court asks how he thinks establishing insolvency of Moeller's companies takes the blame from Bubar, to which Zalowitz answers that, "the entire operational originality of the great Mr. Moeller was not his wisdom, it was the spiritual advice of Reverend Bubar . . .", to which the court says, "You still have not answered my question."

6763* Zalowitz objects to proposed witness due to lawyer-client relationship, invasion of Bubar's rights, and "also a violation of the ethics of the legal fraternity according to the American Bar Association." (At start of next trial day, Bubar with advice of Zalowitz, waives

(19a)

attorney-client privilege as to Mr. Nixon, a Washington patent attorney (6822), who later testifies (7073) about a consultation with Bubar.)

6766* Zalowitz argues that his client, who "is penurious and without funds", should not be treated as a second class citizen and required to make any showing to the court--whether names or reasons--of necessity for the issuance of subpoenas at government expense under Fed. R. Cr. Proc. 17(b). Court adheres to rule.

6803 Zalowitz starts cross with irrelevant question, which he attempts four more times before giving up cross.

6996 Zalowitz starts cross-examination of witness who damaged his purported water treatment process by attempting irrelevant questions about first introduction of witness to Bubar by Moeller. There are numerous interruptions, including Zalowitz's interruptions of answers. Told to go to another topic, he is unable to frame any clear question to show, as he apparently intends, witness' animosity to or "scurrilous" characterization of Bubar.

7035 Zalowitz on cross presses same witness for a complete description of the water treatment process and gets the answer "by inoculating waste water from a soft drink plant which contains mostly sugar with--if you pardon the expression--s-h-i-t . . . This is the word he used." Zalowitz tries to use "effluence" and is told by court not to argue, witness told what Zalowitz wanted to know--what Bubar said. Then Zalowitz brings out again that Bubar was "vague about

(20a)

the details" (7037). (This all seems to make the prophet look like a fool and further erodes one of his excuses for being in plant.)

7193 Zalowitz on cross of another witness starts to get into area (which was highly damaging to Bubar if court had not previously sustained a Bruton type objection 7180-88), and is told by court objection was sustained. Zalowitz then goes to areas both irrelevant and beyond scope of direct, including whether Bubar prayed for witness' salvation, which results as usual in a number of sustained objections.

7319* Court holds in camera hearing with Zalowitz and his client for purposes of amplifying submissions under Rule 17(b) for subpoenas at public expense. Court has placed under seal for inspection only by reviewing court two lists, one of 165 names, the second increasing the total to 250--"names and claims so far beyond the bounds of reason. . ." (7325) Zalowitz gives some limited answers as to need, but contends a penurious person should not be put in position of divulging his entire defense. Zalowitz says he knows why he prepared list but is unable or unwilling to articulate anything specific. Court says Zalowitz is not communicating and will have to use words that make sense. Zalowitz says all 250 have great meritorious positions to defense (7330). Court insists on compliance with rule, and other counsel told him specifically why they needed witnesses. Zalowitz says eight other counsel have joined against Bubar

(21a)

and Zalowitz will not be guided by them but "by the position that the Master directs me to answer this honored Court" (7332). Zalowitz wants prosecution witness back from Colorado of whom he could have asked questions on cross (7334-5), as well as several other prosecution witnesses whom he might have cross-examined or who pertain to Bubar's ID and an alleged illegal search and other matters of a pretrial nature or for whom he is unable to state what new material he will bring out. He sought Moeller's wife about a matter not in dispute and as to whether she felt Bubar was crazy (7341); various witnesses as to Bubar's prophecies, as to Bubar's position with the CIA and Jack Anderson who understands the entire machinations of the CIA . . ." (7343), as to invasion of Bubar's rights where he is photographed by a bank camera, a telephone employee to explain "how public utilities under the coercion of the FBI or CIA can invade into the spiritual church that this phone was listed under" (7347), publishers of Bubar's works, FBI agents who "had lied on the stand back in Memphis" (8350); the writer of the Readers Digest article on forged fingerprints--"forging them is no great matter of the FBI and the CIA" (7351), the man whose fingerprints were lifted; Senator Church; Vice President Rockefeller. It appears Zalowitz has not alerted any witnesses. The court, exasperated throughout, allows subpoenas to four (7353-5). The hearing resumes the next day and there are further absurd statements by Zalowitz: FBI harassment of defense witnesses and methods being used

(22a)

to inculcate Bubar, the method why Bubar "has been emasculated in the same fashion as Christ was by the press, radio and TV", a witness who did not identify Bubar to show how the FBI pressured witnesses into identifying people, numerous government witnesses he could have cross-examined, how Bubar was abducted from the federal courthouse "into the hands of the State Police and the State", another psychic who also prophesized the fire, and a group regarding Bubar's "CIA involvement" (as to which he refuses to divulge his claim), matters involving state court proceedings. The court reluctantly allows six witnesses as to Bubar's prophecies of other things which came true, and then grants a few other requests, and at 165 states general reasons for denial including frivolity where he has not already made specific reasons. Transcript ordered sealed for reviewing court. (See further 7458 below.)

7429 Zalowitz recrosses insurance company attorney and tries to get into irrelevant and improper areas concerning status and disposition of fire insurance claim and contents of insurance policy, resulting in numerous sustained objections. When he refers to a civil suit regarding the fire loss, *court calls Zalowitz to the bench and asks him if he has knowledge of such a suit (7450). Zalowitz says yes, is informed none has been filed, withdraws question, but will not divulge who told him. Court cautions him not to without knowledge inject extraneous matters into suit, "some of which are apparently totally false . . ."

(23a)

7453* Court resumes in camera hearing for Zalowitz to present rule 17(b) claims and the selection of six persons on the issue of Bubar's prophecies. As to Bishop Fulton J. Sheehan, Zalowitz can't and won't answer the basis of claim of personal knowledge. As to a publisher, Zalowitz is four times unable to articulate any reason other than to indentify a published article, but then says he wants to ask the man if he considers Bubar to be a prophet and his prophecies true. As to Jeanne Dixon, she acknowledges Bubar is prophetic and knows of Bubar's prediction regarding President Nixon's demise, but Zalowitz refuses to state what relevant facts (i.e. prophecies come true) she will testify to. Zalowitz protests curtailment of constitutional rights.

D. Defendant's case (Dec. 1, 1975 - Vol. 41)

7486* Zalowitz tells court he has alerted his witnesses for Tuesday although court had instructed him to begin Monday.

7491 Zalowitz starts defense case with Bubar's niece, as to several of Bubar's prophecies. Then he tries to get into teachings of Bubar's Church, but is told by court religious views are not relevant. Then he tries several other irrelevant questions and then tries to get into evidence articles on the prophecies witness testified to. He then tries again on Bubar's beliefs and is admonished about a direct violation of court's prior ruling. He then tries unsuccessfully to get testimony about Bubar's psychic works and his status as a psychic, ad absurdum, and well beyond court's repeated clear direction about limited inquiry as to predictions come true.

7515* Court admonishes Zalowitz for blatantly leading questions. Zalowitz assures him and asks for some time to talk with witness, and court asks for "offer of proof since we had so many plainly irrelevant questions."

(One defense counsel again moves for severance due to Zalowitz's performance being prejudicial to all defendants--denied.)

7519* Zalowitz's offer of proof is that the "subject of religion is going to be an intrical (sic) part of my defense . . . as to whether Reverend Bubar, as she knows him to be a Reverend, and religion that he expounds to

(25a)

people, whether he could conceivably be a person who would do the items that the government is asserting he did do . . . It's not a matter of religious views, Sir . . . it's a matter of whether a man has a right to have his protection as a minister to be protected in accordance with his religious tenets of his faith . . ." Court says irrelevant.

7550 In direct exam of Bubar's brother, also a minister, Zalowitz repeatedly attempts to ask leading questions: if Bubar told his brother that he was a CIA agent, he knew H. L. Hunt, he took certain trips, he knew William Colby, and other questions demonstrating his lack of knowledge of the hearsay rule, or his repeated disregard of it and of the impression created by numerous sustained objections. Court cautions him (7562) about putting questions which call for hearsay answers, but then goes to areas court has ruled out many times before, for which court,* having excused the jury admonishes him and proceeds to clarify what hearsay is and just what can be asked about Bubar's prophecies (7564). Court asks if any of these rulings are not clear, and Zalowitz says yes, no "mention of religion and God . . . is . . . incomprehensible . . . and . . . is . . . curtailing any defenses, sir." Zalowitz also protests curtailing him about CIA and FBI, although he has repeatedly declined to set forth his claim of relevancy, and is finally told to desist, that there's not going to be constant reargument of rulings.

(26a)

(It is readily and repeatedly apparent during both direct and cross of Bubar's brother that he lacks direct knowledge of almost everything he was asked by Zalowitz.)

7598* (Moeller's counsel marks Bubar's book for ID, and refers court to pages 10-12 supporting earlier motion for psychiatric exam, which court denied. His claim is to show certain things about Bubar's mental state makes it less likely that Moeller committed a crime. The court responds in part (7600) . . . " Now some things have already been developed by Mr. Zalowitz that I would think give you a basis to make the very claim you want to make . . . ", and will wait to see what more Zalowitz develops by the end of his case. This seems to indicate that Zalowitz is, unwittingly, hurting his client's case and helping Moeller's.)

7601* Zalowitz: "On Thursday morning, by the grace of the Master on high, I shall be here as chief and only counsel for Reverend Bubar." Bubar indicates he wishes only Zalowitz and no other attorney.

7603 Zalowitz calls witness who attended a spirituality seminar of Bubar's and was told by him to stop dating a man. Then Zalowitz repeatedly tries to get into forbidden area beyond specific prophecies, as well as into vague, manifestly irrelevant questions, including her church attendance, religious feelings, resulting in pages of objections and exchanges with court and U.S. Attorney. (The net testimonial result is only a prediction that Nixon would leave office because of health, which was already in

(27a)

evidence. The net effect on the jury of such a performance could not have helped Bubar.)

7604 Zalowitz calls a minister and again gets off to a bad start and is told by court either to ask about specific prophecies witness heard Bubar make, or move on.

7645 After obtaining numerous "predictions" (some in a very loose sense) from another of Bubar's brothers in the ministry, an objection by Moeller's counsel as "cumulative" is sustained. Then Zalowitz tries to bring out other "prophecies", such as doctors becoming faith healers, people becoming invisible, government controlling minds, antibiotics being used to change personalities, and the use of TAD (thought-action-deed) machines. (How this weird assortment of possible future happenings could help Bubar escapes the rational mind.)

7673 Zalowitz asks to stop early and court says:
". . . you really wear my patience. I told you yesterday, in words that are as clear as I think words can be, that you should have witnesses here for a full day. . . I can scarcely believe you thought they'd fill up a day, really." Court warns that evidence as to prophecies is becoming cumulative. Court directs Zalowitz to have 12 witnesses present on Thursday (two days away) and alert a goodly number for Friday (7679).

7683* "They will be here. You'll be prepared. I thought I could do it just by having your assurance of a full day of testimony. I tried that yesterday, and I found, to my disappointment, it didn't work. So I know I have to be more precise with you."

(23a)

7687* One defense counsel renews severance motion and refers to two days of prophecies as indicative of "lunacy", and that Zalowitz's examinations are highly prejudicial to other defendants. Court says the testimony takes up time that might be better spent, but that the jury can focus on issues of guilt or innocence of defendants.

7693* Court deletes three witnesses at government expense as to Bubar's prophecies, and says Zalowitz did not tell him there would be five witnesses at Bubar's expense as some subjects. Zalowitz remonstrates, then marks certain articles and books for ID.

7699 Zalowitz calls non-expert as to Bubar's water treatment process, asks a lot of "would have" questions and is, of course, met with a host of objections sustained as speculative, or irrelevant.

7711 Court requests Zalowitz's claim; Zalowitz explains generally, but when asked to tell specific tie in, he refuses "and verily, your Honor, not even to you, sir. I'm asking the questions." Zalowitz then withdraws the question, starts another, and when the court says it assumes, "there won't be a repetition of that particular technique of asking a question and not claiming it at all", Zalowitz responds, ". . . it's not intended a technique in any form, shape or manner, it is the way--direction the Master told me to reply to the court, and I am doing so, sir."

7719 A Zalowitz objection (after the above witness' answer of "true"):

(29a)

"One moment. One moment. One moment. Don't answer the question. That's not cross-examination, sir, that's far beyond the realm of proper cross-examination, and the U.S. Attorney knows that.

The Court: Overruled." (as have been, and will be, most of his objections)

7732 Part of Zalowitz's redirect of above non-expert witness:

"Do you happen to know whether Thomas Edison had technical knowledge for all the inventions that we are partaking of today in this great land and in the United States and in the world?"

The objection was sustained (with some humorous by-play by other counsel). Zalowitz starts to reformulate, then withdraws:

The Court: "I think you are well advised.
Mr. Zalowitz: Thank you, sir, my advisement comes from the greatest power on earth." (sic)

7762 Zalowitz, near start of his direct of Shelton plant engineer, tries three times to ask him about his report or interview with the FBI, clearly irrelevant on that point. Numerous exchanges with court and counsel again punctuate his "questioning", with the court constantly trying to move it along.

7781* Zalowitz's answer to court, "doesn't give me any remote relevance to this case . . . no further questioning on the topic of the heat exchanger will be permitted . . . Is that clear?" Zalowitz then flubs another chance to state such claim. Then court says it is not going to run the risk of having a lot more irrelevancies, "so just make your claims as to what topics you have right now." Zalowitz

(30a)

asks for two minutes to answer, and is told "you are in the middle of your own examination. I'm entitled to assume that you know why you called the witness" (7784). Zalowitz is then asked to state what statement of the witness he claims is untrue (as Zalowitz had in a gratuitous comment to the jury). Zalowitz is unable to do so, and the court says ". . . as a gentleman, you owe him an apology" and cautions Zalowitz not to make other claims of untruthfulness unless he has a basis (7786).

7795 In a series of objections to U.S. Attorney's cross-examination, Zalowitz closely demonstrates he doesn't know what hearsay is; The Court: "He's asking whether he heard, not what he heard. Objection is overruled." (See also on hearsay, 7814.)

7797 Zalowitz objects to question as beyond scope of direct and "seven thousand miles afield of the relevancy." Court agrees on first point but not on relevancy and overrules.

7801 Zalowitz calls Jack Anderson (columnist) whom he subpoenaed, but there is no response.

7813* Court has lengthy exchange with Zalowitz regarding his repeated failure to get witnesses to court on time, at one point saying, "Spare me the rhetoric and needless pomp." Zalowitz at 7826 wants witness Festa again on water reclamation, and the court says, "He's not coming back for a third time, he's been here twice already." Zalowitz says, "that's a deprivation of the defense

(31a)

witnesses . . .". Court delivers stern lecture to Zalowitz, "inexcusable", etc. (7828). Court then asks if Zalowitz will put Bubar on stand, and is told he will not take the stand now or later, "on religious principles"--the First Amendment. Court has jury go home for day and instructs Zalowitz to make telephone calls to some named witness and report the results. Bubar interjects name into Zalowitz's later report and is told, "Just a minute, talk to me. Just a minute. Talk in my ear. I'm your voice by the Master's direction . . ." (7835).

7842* Court says, ". . . in view of the fact that you have called witnesses with little relevance to the case and asked innumerable questions with no relevance to the case,"

it's going to ask Zalowitz to renew his claims. Zalowitz protests and is told that the court, "will ask for an offer of proof any time I have reason to doubt whether a witness has relevant testimony." (Zalowitz's ridiculous posture intensifies during lengthy exchanges about prospective witnesses (see 7857).) Then it turns out that Zalowitz is

"in flagrant disregard of the rules and my instructions to you. I told you if you wanted to issue other subpoenas, you should hand them to the . . . Marshal and you should tender the necessary funds." (7862-4)

7363* Court tells Zalowitz to "be still . . . either desist from interrupting or you will sit down!"

7870* Court instructs Zalowitz that since "so many of your claims have been so totally irrelevant, have consumed an inordinate amount of court time", he must submit a list of all his proposed witnesses the next morning, with concise

(32a)

offers of proof.

7877* Zalowitz's claim as to Jack Anderson is "patently frivolous".

7884 Zalowitz calls columnist for National Tattler who did article on Bubar, a leading psychic, and elicits some testimony regarding prophecies but soon direct dis-integrates again into irrelevancies.

7393 An exchange between Zalowitz and U.S. Attorney about hearsay, in which Zalowitz says he knows its meaning and latter says "I doubt it" ends with court ruling: "The objection is sustained. It's both hearsay and cumulative." Many, many other questions to witness Billings about her and Bubar's volunteer work and churches are ruled irrelevant. (Here is perhaps the worst of many bad examples of Zalowitz's questioning, sense of relevancy, apparent inability to listen and learn, and apparent disregard for the disastrous effect of such antics on the jury.)

7923* Zalowitz's subpoena to John Shaw, co-defendant who was government's prime witness and was cross-examined for 3-1/2 days, is quashed.

7932 Zalowitz calls member of Bubar's church, gets nowhere, and when asked claim, it is to put "into proper focus who Reverend Bubar is, demon or saint", as well as the work of his Spiritual Outreach Society, her spiritual needs, her interrogation by the FBI and a host of other areas already ruled irrelevant or cumulative.

7940 (Zalowitz calls Moeller's brother to establish

(33a)

Bubar's relationship as his spiritual advisor and trouble-shooter, had permission to go about the plants, his terminated directorship, and aquisition of plant.) As to questions about insurance coverage, court says it's not clear why Zalowitz is asking this (7968), and finally calls Zalowitz to bench to determine if matter worth pursuing, and finds it isn't, and then, at 7975, the court says: "I don't know what you're trying to prove. Are you trying to prove they are both guilty?". Zalowitz cannot answer how an alleged instance of another fire will help his client, and so his direct is ended.

7976 Zalowitz has opened the door as he easily should have anticipated, for cross-examination by Moeller's attorney, who brings out that Bubar's directorship was terminated in part because "he was acting strange and a little peculiar" and was going to run that year for President of the United States, and "all kinds of silly things like that at the time". (7979)

8004 (Moeller's attorney makes offer relating to Bubar's "mental instability" (8006), which court rejects.)

8034 Zalowitz brings on another witness regarding Bubar's monthly publication, his church, his telephone, etc., all of which is irrelevant or undisputed, and, this time Zalowitz gives up (8037).

8038 Zalowitz brings on another parishioner who is cumulative and quickly excused, and Zalowitz says he has no further witnesses ready, except FBI agent.

(34a)

8042 Zalowitz brings back "coordinating" FBI agent, and attempts to rake over old ground and is met by repeated sustained objections and court requests for specific topics and questions. He gets nowhere and witness is soon excused (8053).

8055* Zalowitz still has not given Marshal funds for his subpoenas. Court has reviewed his written offer as to Tuesday's witnesses and rules they are deficient in each and every respect; including any to Edward Levy, the Attorney General, Richard Helms of the CIA, and Clarence Kelly of the FBI, and William Colby. Zalowitz appears incredulous. Court reinstructs Zalowitz about witness list. Zalowitz asks if summations will be at conclusion of each defendant's case.

8065* Zalowitz resumes the following week by stating Bubar is without funds to order any one of his projected 246 witnesses, and argues for about the seventh time that the court has denied witnesses to testify, "on the subject of religious freedom and religious right, and as a defense of religion and God has been banned from the courtroom . . . the court has also denied my client . . . the inherent right of the protection of the First Amendment of the Constitution." (See 8068 also.) The court notes he has sought mandamus and it's been rejected and Zalowitz says he is filing an appeal from that "in accordance with the rules". To the court's query if he has advanced funds to the Marshal, "the answer is no, for we have no funds. We are penurious . . .". The court requests an offer of proof

(35a)

as to Professor Thomas Emerson of Yale, and is answered by Zalowitz's tribute to the Professor and his "understanding of the significance of the First Amendment . . . that was set forth by our forefathers upon which our entire nation and entire structure of judiciary, executive and legislative (sic) is bound". Court rejects the offers as "patently insufficient", and points out "the distinction between views on the law and on the facts". (8068)

8069* Zalowitz does not know if examination of FBI agent has been completed, so asks court and is told witness was excused. Zalowitz also wants missing witness held in contempt, without knowing if he was served with subpoena yet.

8072 Zalowitz calls another member and volunteer worker of Bubar's house of worship in Memphis, and again tries any of same irrelevant questions. As to the last question, the court says:

"that's the third time you put it. It's been objected to twice. If you do it again, your examination will be terminated."

Zalowitz claims "an inadvertence".

8079 Zalowitz calls another minister who knows Bubar and testifies, in response to awkward questions, about his "visions". A relevancy objection to whether he was interviewed by the FBI is met by another (incomprehensible) statement by Zalowitz:

"It's very material to show the significant thing that the vision of Reverend Bubar is portrayed in actual life even at this moment, sir."

(36a)

A lot of other relevancy and hearsay objections are sustained and then it appears that Bubar may have told the witness his hurricane and airline crash prophecies after the events (8090-2).

8098* Zalowitz calls a newspaper reporter, the court asks for an offer of proof at the bench and indicates that Zalowitz had previously told him the witness would be for the extent of pre-trial publicity, an issue not for the jury. Zalowitz now says its in regard to "insemination or leakage" and misconduct in the U.S. Attorney's office regarding John Shaw's immunity deal, but is, of course, refused--and is then unable to state any valid topics. Zalowitz finds no other witnesses and court firmly rebukes him, and proceeds with Moeller's case, leaving open the taking of additional testimony in Bubar's case as witnesses may appear.

E. Other Defendants' Cases (Dec. 8, 1975, Vol. 45)

8103 Zalowitz objects unsuccessfully to the answers to only the second and preliminary question of Moeller's first witness, a partner in Ernst & Ernst, CPA's.

8110 Zalowitz asks Moeller's attorney to "slow down the momentum", so he can write notes to cross-examine.

8121 Zalowitz ineffectively objects to admissibility of chart prepared under witness' supervision, then at 8125 states a meaningless "position" as an objection to it.

8154 Zalowitz objects to leading question which cannot

(37a)

prejudice his client and is of course overruled.

8257 With Moeller on the stand on direct, Zalowitz starts off the day with an "objection" to religion but a welcome to Christ in the courtroom; but Moeller is allowed to testify that in 1965 he had an experience involving his daughter's illness and Bubar's prediction which allowed him to "accept Christ".

8286 Among occasional interruptions, Zalowitz again unsuccessfully objects to an exhibit which has no bearing on his client's case.

8302 Now Zalowitz objects to a question without any claim of prejudice to his client; again at 8419.

8432 Zalowitz objects as hearsay to a question not offered for its truth, and then rudely interjects twice, and is told "please sit down and avoid interjections of that sort" (8434).

8455* In response to a motion to quash a subpoena, Zalowitz is asked by the court to precisely state how this testimony would help. Zalowitz is unable to do so.

The Court: ". . . You are having an enormous amount of difficulty in giving me a single reason . . . I have taken about ten or fifteen minutes trying to elicit from you a statement, and I just can't get one. You talk about circumstances, and then you say your client was framed. . . Then you go on to other allegations . . . I will give you until tomorrow morning at ten o'clock to submit in writing . . . exactly what testimony you hope to elicit and how that testimony has some bearing on your defense. . ." (8460).

9654* Zalowitz marks the whole Holy Bible for ID.

(38a)

3662 Zalowitz unnecessarily interrupts cross of Moeller several times at start of another day, twice to complain about "Mr." before Bubar's name, rather than Reverend. The second time the court tells him "Mister" was not used and not to interrupt unless it is (8666).

8762* Zalowitz makes motion for mistrial due to comments of U.S. Attorney on cross of Moeller, but is not specific and matter is deferred until end of day.

8771 During U.S. Attorney's cross of Moeller and after several hearsay questions and answers damaging to Bubar, Zalowitz finally objects to a hearsay question and is sustained. Later at 8789, he asks to have one of the prior damaging responses struck, and court so instructs the jury. (This is all correct, but late, and instructions run into the old problem of possibly emphasizing prejudicial material.)

8819 Zalowitz, in cross of Moeller, gets into a long awkward and foredoomed exploration perhaps intended to show that Bubar was responsible for Moeller's business and financial success.

8840* Court asks what Zalowitz wants to elicit: "in the last half-hour . . . you didn't elicit one single fact that had not already been elicited in an uncontroverted way." Zalowitz responds his perceptive questions are coming closer to the truth.

The Court: "Don't flatter yourself. . . I don't need that kind of ridiculous argument back to me when I have asked you a specific question . . . If you are unable to answer it, you risk terminating this examination right now. . ."

(39a)

Zalowitz vaguely responds he is challenging credibility and court says he hasn't done that in the past half hour, and again asks for specific statement which is challenged. Zalowitz is unresponsive.

The Court: "I want at least some indication that you have some proper questions. Had your examination over the course of nearly three months now not been so chronically irrelevant, I wouldn't have to do this . . ." (8343).

Zalowitz says he is going to prove Moeller received monies from another file, and Moeller's attorney says Zalowitz should be warned about things like that--"He probably doesn't know any better." Zalowitz demands an apology and is firmly told by the court he cannot explore a topic "plainly prejudicial to another defendant and very likely prejudicial to your own client." Zalowitz lists areas already covered or undisputed and, protesting that every topic is closed to him, says, "Maybe I'm too cantankerous, sir.". The Court: "Irrelevant, is the adjective." (8347). Zalowitz says he wants to get into conversations between Moeller and Bubar, and court says since he has previously objected to certain of them, he is going to have to come up with a good reason. Zalowitz claims it was to put him and Bubar "in a position of extortion", and when asked "for what", he answers, "And I wonder for what". The Court (appearing incredulous and/or indignant) presses Zalowitz to know exactly what is the basis for the claim of extortion

(40a)

(at which Zalowitz was present). Instead of assistance with Bubar's legal fees (?), Zalowitz says a check "was for the purpose, as I view it, to pull back our position of defending ourselves." Moeller's attorney exclaims (without admonishment): "He's crazy, He's absolutely crazy . . . You are out of your mind." (8854). The court says after six tries, "I have gotten no comprehensible" response, so sustains the objection. Shortly, Moeller's attorney says the accusation is "a goddamn lie" and Zalowitz is "a goddamn liar"; and, as Zalowitz protests, court tells him to be quiet or he'll be dismissed from the case--and does not admonish Moeller's attorney (8855). (The day ends--and at the start of the next one Zalowitz has no further questions.)

9006 Through the printer, Zalowitz introduces into evidence Bubar's book, "Natural & Spiritual Laws" and "Today's True Disciple of the Master" (Exhibit 1208 & 9) for ostensible limited purpose of emblem used on Bubar's publications.

9017* Zalowitz offers Bible (Exhibit 1206), as a full exhibit to prove, "there has not been one witness who has taken the stand who has sworn upon a Bible . . . the position of Reverend Bubar is devoid of the fact that there is an absence of God in this courtroom . . .". Court rejects offer, and indicates witnesses were properly sworn even though hands were not on a Bible. Zalowitz vaguely (as usual) indicates this may be a test case. Zalowitz then marks for ID portions of prior day's transcript marked in

(41a)

support of mistrial motion, based on prosecutorial misconduct in referring to Bubar as "Mister" and "desecrating" the term "Reverend", and a "highly prejudicial inflammatory statement". Court doubts if jury heard the latter, but in any event, it is insufficient to justify mistrial, and denies motion.

9191* Connors' counsel indicates that Peter Betres and Bubar would waive Fifth Amendment privilege and testify for Connors. Zalowitz asserts he's relying only on the First Amendment, "nothing else. It's religious freedom, the First Amendment . . .". Later Zalowitz relies on the Fifth.

9458* Zalowitz again unsuccessfully attempts to explore facts of plea bargain relating to Pennsylvania crimes that might be less impeaching of accusing witness Shaw.

9856* Court admits Exhibit 1231 but excludes others (to 1245) offered by Zalowitz as irrelevant or cumulative or both. Zalowitz insists on naming exhibits in transcript, and when told he can do this by brief to Court of Appeals, he claims once again, "I am being denied the equal protection of the law and due process of law.". Court refuses other papers, even for ID, but allows Zalowitz to file a list at the end of trial, as a court exhibit, of items which are not even getting a marking.

9972* Zalowitz is unable and/or unwilling to explain just why he needs Mr. Ulle as witness. The Court says:

"we're not going to play games . . . You are in a court of law, you are an attorney . . . and you have (sic) going to observe certain

(42a)

rules, and one rule is that when the court asks you a specific question, you are going to have to answer it . . . I have asked innumerable times for an offer of proof as to the relevance . . . I have no basis to rule that this testimony is relevant . . . the motion to quash is going to be granted. You simply cannot run this courtroom on your terms." (9975-7)

10168* Zalowitz tries to mark as court exhibit an untrue newspaper article reporting Shaw was already sentenced, and is of course refused.

10322* Zalowitz questions witness Myers on direct, court excuses jury and tells Zalowitz "you asked that [hearsay] question either in deliberate circumvention of my ruling or because you just didn't listen to a word I said . . ." (during four prior rulings). ". . . in view of the fact that the examination has gone on and has unearthed nothing pertinent to this case . . .", Zalowitz will have to tell precisely the topics he plans to elicit. Zalowitz comes back and says he has no further questions "in view of the position of the court", tries to withdraw that comment, and is told that he made a representation in chambers as to the need for this witness at public expense--and to be specific as to any restrictive rulings. Court and Zalowitz argue, Zalowitz has to be told several times that court did not make a ruling quashing Ulle subpoena (10330). Court repeatedly (and sarcastically) asks Zalowitz what facts he wants to elicit and Zalowitz decides finally not to ask further questions (10332-40). Without any cross, witness is excused.

(43a)

10340* Saying "My prophecy tells me they will both be denied in toto", Zalowitz submits two "motions", one to reconsider and for which he tries to get an exhibit number, and the other a list of items which were not even given an exhibit marking (Ct. Exhibit 21).

10345* Zalowitz tries to mark newspaper articles, a book, and a copy of the Declaration of Independence, and the court says he can only submit a list since the documents "are not even of colorable relevance".

10355 Another clear example of Zalowitz's misunderstanding of hearsay--(and of an FBI witness called by him who contributes nothing to defense, nor would be expected to).

10360 Zalowitz again tries to ask about religious beliefs (and again puts on a subpoenaed witness from Memphis who contributes nothing of significance).

10396* Zalowitz insists that court should inform the jury of a minister's First Amendment right not to testify.

10429* Zalowitz offers tape of his client's interview with authorities on March 7, and court asks "under what theory of admissibility are you doing that?". Zalowitz says to show jury that Bubar invoked his constitutional privileges at that time, and is told the statement "just isn't admissible under any theory of law . . .". Zalowitz then says it goes to credibility of agents present at that meeting (which was not offered by the government). Court tells Zalowitz to listen to question, or has to repeat it

(44a)

in attempt to get answers. Zalowitz then suggests government has withheld from him exculpatory evidence, "while standing there with the tape in your hand"! (10436). Zalowitz has to back down, so his "complaint" is that the government chose not to put on evidence of the later meeting, and then goes back to credibility. Court tells him it's "an absolutely pointless issue", and says Zalowitz can't attack evidence government didn't offer.

10439* Court questions Zalowitz about knowledge of possible deliberate delay of witness:

"Was it because you knew that your client was going to precipitate a delay in the case?

Mr. Zalowitz: Absolutely not, sir.

The Court: Can you think of any other rational reason?

Mr. Zalowitz: Sir, the rational reason of prophecy, and that's a rational reason in my judgment, sir."

10441* Court is incredulous at Zalowitz's further statement that he was endeavoring to cooperate with the court, "by sending away from the courtroom a man whose testimony you want to put on the stand today . . . your idea of cooperation comes perilously close to contemptuous conduct." Shortly later Zalowitz says, "I made the prophecy but God makes the decisions."

10522 Zalowitz wants to rephrase a question "because of the laughter".

10524 Zalowitz attempts to introduce through witness another witness' affidavit of the fire prophesy; excluded as "clearly hearsay".

(45a)

10538* Zalowitz changes mind again about calling Bubar to stand--"I have decided not to. . . That is my position in view of the introduction of the Bible into this courtroom that the last witness testified from and took the oath on, yes, sir. That's our position." (10539).

10540* Court asks question of Bubar whether he wants to call any witness other than those already brought by his attorney to court's attention. Zalowitz twice answers instead, and evokes the comment, ". . . you just have twice now . . . shown that you just don't understand the question". Then Bubar answers unresponsively, court rephrases the question, and Zalowitz again answers unresponsively. Court tells him to listen, and finally gets a responsive answer from both.

10668* Zalowitz makes very brief motion for acquittal argument, adopting the arguments of other counsel and stating simply that, "Naivete is not a crime but it happens to be a truth with respect to Reverend Bubar".

10821 (Zalowitz's three hour closing argument to jury is not in record.)

10823* Zalowitz incorrectly disputes that Moeller's attorney in argument to jury misquoted testimony to create the position that Bubar was in competition with another psychic, Ricks (as to the prediction of this holocaust). Court tells Zalowitz to listen to what is being said and that his "vituperative and noisy outburst just now . . . is beside the point . . ."

(46a)

F. After Charge to Jury (Jan. 14, 1976, Vol. 65)

11018 Zalowitz objects to marshalling of evidence regarding Bubar in court's charge to jury, which did not indicate that Bubar's statement to FBI on March 3 "was done under compulsion and not voluntarily, notwithstanding that I was there . . .". (This appears to indicate Zalowitz's eventual awareness that the statement Bubar made in the presence of his attorney was used harmfully against Bubar later at trial.)

11034 In discussion of request from jury during its deliberations, the court says, "You are going to give a reply, Mr. Zalowitz. I am frankly sick and tired of your constant evasion of my questions."

11037 Zalowitz substitutes "consternment" of the court for "concernment". The next day he changes it to "consternation" (11051).

11057 Court has to pointedly explain to Zalowitz its discretionary ruling regarding jury's request for testimony of Shaw, but Zalowitz still objects (to "failure" to furnish jury not yet existent complete transcript of five days of testimony).

11065 The next day, Zalowitz starts response to court's statement about jury's request and is told, "You didn't understand a word I said." Then Zalowitz goes on to try to "clarify" his remarks for a fifth time and is told, "It's an impropriety because it's been made repetitiously. . ."

11090 Court asks when Zalowitz ever requested

(47a)

transcript of any testimony at public expense, and is told that Zalowitz never made the request because he knew it was to no avail. Court tells him he made a wrong prediction. (See 11103--he didn't get transcript because "he didn't ask for it".)

11081 Jury requests a portion of charge and Zalowitz insists on reading of complete charge. Other counsel are reasonable, and Zalowitz joins them and is told by court:

"You have to make up your mind, Mr. Zalowitz. You first said you wanted it all, and now your're agreeing with them that you want less, so you can make--you can object any way you want, but I think in fairness to you, you ought to know what position your're taking. Mr. Zalowitz: I am taking the first, deleting and waiving the last." (11084)

11113 With Zalowitz still wanting the full Shaw testimony read, court rules as to certain portions. ". . . Mr. Zalowitz's examination that he referenced for me, I am satisfied does not in any respect refer to the jury's request . . ." Zalowitz remonstrates that his position stands "unfetished".

11118 Court tells Zalowitz that portion of transcript he wanted and didn't get doesn't have to be marked separately as a court exhibit since in the event of an appeal it will be part of the second and "doesn't have to become a part twice".

11137 In regard to post-conviction bail for Bubar, Zalowitz insists Bubar is innocent "insofar as the final determination of the Supreme Court".

(48a)

11141 In response to court's request for views of counsel on a small jury problem, Zalowitz insists he's still in the case, and is told future jury deliberations are of no concern to him since verdict against Bubar returned.

11143 Zalowitz interrupts to make a "request" that is really a complaint. Court tells him the latter "would have been the honest, truthful answer", and sternly warns him, ". . . you personally will be subject to sanctions for misrepresentations to the court. Do you understand that?"

G. New Trial Motion & Sentencing (March 22, 1976, Vol. 79)

On March 2, Zalowitz filed an ill typed, awkward, poorly supported motion and memorandum, primarily regarding the prosecutor's remarks. He asks to dismiss the indictment, and for an order granting a new trial or quashing the indictment, and concludes; in capital letters:

"The fortuitous presentation herein is presented to this court with respect, dignity, and divine inspired and guid d thereto."

(but "fortuitous" must mean his grammar and his defense, and "divine (sic) inspired" can't overcome such incompetence).

In arguing motion for new trial, Zalowitz makes remarks such as the following:

a) The U.S. Attorney comments "supercharged, inundated, and absolutely paralyzed the thinking of the jury"

(49a)

regarding Bubar's failure to take the stand.

b) "Bubar, a minister of the gospel, and not just another person . . . is entitled to an additional equality and preference (of the Constitution)" (?)

c) "it took much travail over a [long] period . . . against taunting by other learned counsel, by frivolity . . . by the U.S. Attorney . . ."

At 15, Zalowitz attempts to offer a press release concerning a prediction in support of new trial.

At 32, in remarks prior to sentencing, Zalowitz, in an overblown, impassioned statement (probably kin to his summation to the jury), includes the following:

a) A comparison of himself to John Adams in representing Captain Prescott.

b) His client was the most maligned person in the trial by the media.

c) The New York Times wrote that Bubar's defense was "not only the most curious, but perhaps the most misunderstood defense in the history of Connecticut."

d) "I am here in a position of representing a man who other counsel have said, 'Well, I can't fight a prophet and Zalowitz, too'."

e) Bubar is guilty only of naivete, following the way of the Lord and God, and helping people with spiritual problems.

f) Bubar has been maligned "as other great personages in all faiths have been maligned", but he conducted

(50a)

himself like Jesus, but stood silent because he is a son of Abraham, a son of God--"and has been put on that same cruxcifix here in this trial" (36).

g) All the probation officers could say in many pages was that Bubar "was different. Yes, he was. John the Baptist was different, too."

At 51, court says motivation of all six convicted defendants, except Bubar, is very evident. Bubar's motivation is not clear but the evidence is overwhelming as to his guilt. Some of the protestations during the trial "have simply been fanciful". His counsel represented this was somehow a CIA plot, yet he and client "declined for reasons best known to them" to give indications to back up that claim, so "I can only conclude that the claim was a sham and a fraud and disregard it entirely". Bubar's status as a minister has no bearing one way or another in his involvement in the crime nor in this punishment. While his role in crime was abundantly established, his motivation may have been cash to Moeller to make a plant purchase benefitting Bubar or simply a great miscalculation of Moeller's reaction to prediction of fire and his wish to have the building burned. (At 58--an aggregate sentence of 20 years was given.)

At 66, After sentencing, Zalowitz wants unsealed the documents regarding CIA which had been sealed at his request!

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

No. 1140

* * * * *

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

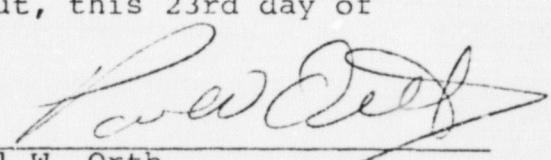
DAVID N. BUBAR, et al,
Defendants-Appellants.

* * * * *

CERTIFICATION

This is to certify that I have this day caused to be mailed by first class mail, postage prepaid, one copy of the brief and supplemental appendix of David N. Bubar to each of the following: Peter C. Dorsey, United States Attorney (together with a copy of Supplemental Exhibits), P.O. Box 1824, 141 Church Street, New Haven, Connecticut 06511; Andrew B. Bowman, Esq., 770 Chapel Street, New Haven, Connecticut 06510; Gregory B. Craig, Esq., 30 South Street, Middlebury, Vermont 05753; Alan Neigher, Esq., 855 Main Street, Bridgeport, Connecticut 06604; J. Daniel Saragin, Esq., 855 Main Street, Bridgeport, Connecticut 06604; Igor I. Sikorsky, Jr., Esq., 111 Pearl Street, Hartford, Connecticut 06103; Rudolph Lion Zalowitz, Esq., 213 Ross Avenue, Hackensack, New Jersey 07601; and David N. Bubar, 40225, Box PMB, Atlanta, Georgia 30315.

Dated at Hartford, Connecticut, this 23rd day of
September, 1976.


Paul W. Orth
Attorney for David N. Bubar